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EXAMINER

LEE, JOHN W

ART UNIT

PAPER NUMBER

2624

MAIL DATE

DELIVERY MODE

03/26/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Attachment to Advisory Action

IMPROPER OFFICE ACTION

The examiner will provide an office action addressing each claim with particularity without new ground rejection. The same prior art will be used.

RESTRICTION RECONSIDERATION REQUEST

The examiner reviewed the applicant's response to election/restriction filed on 12 June 2007, but there was not even an implication that the applicant elected species I with traverse. The applicant just argued that the examiner restriction was not improper. However, merely arguing whether the examiner's restriction being proper or not does not mean that the applicant elected one species with traverse. Examiner strongly states that the restriction and the decision, considering the applicant elected species I without traverse, was proper and right. For further detail explanation regarding of restriction, refer the previous office action sent out.

REJECTION UNDER 35 USC § 103

The applicant argues that using Suzuki's invention and Wittig's invention in De Hann's invention to provide a more reliable method and apparatus for noise measurement (De Hann (col. 1, lines 49-50) which is a simple substitution of one known element for another to obtain predictable results or is using known technique to improve similar devices (methods or products) in the same way is improper unless supported by evidence. However, examiner disagrees with that. The combination can be valid

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according to the rulings of the Supreme Court of *KSR v. Teleflex* (*KSR v. Teleflex*, 550 U.S. ____ (2007)) that teaches that the so called teaching, suggesting and motivation test (TSM) is one of a number of valid rationales which could be used to determine obviousness, but not the only rationale that may be relied upon to support a conclusion of obviousness. It is not necessary the motivation or rationale have to be supported by evidence in the record. Since Suzuki, Witting and De Hann's invention is all related with image signals using blocks, "a simple substitution of one known element for another to obtain predictable results or is using known technique to improve similar devices (methods or products) in the same way" can be the rationale to support a conclusion of obviousness based on MPEP 2143, which discloses the exemplary rationales.

Because the rejection addressing each claim with details was not provided on the second office action, a new office action will be addressed without new ground rejection using the same prior arts.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Hann et al. (US 5,657,401) in view of Suzuki et al. (US 6,118,552), and further in view of Wittig (US 2004/0066468).

Regarding claim 1, De Hann discloses an apparatus for measuring noise (abstract; Fig. 1 and Fig. 3), comprising: a delay separately delaying the pictures of the input image signal by one period (Fig. 2-11 and Fig. 4-11; col. 3, line 23, "... delay ..."); an SAD calculator calculating an absolute difference between a present picture and an a picture of the image signal delayed by the delay (abstract; Figs. 1 and 3, "SAD"). However, De Hann does not disclose all the claim limitation of claim 1. Instead of De Hann, Suzuki discloses average luminance value (claim 9, "average luminance component data value") a block average calculator dividing individual pictures of an input image signal into blocks and calculating average luminance values for a plurality of the divided blocks (Figs. 1-30, "block division component" and 1-32, "average data value calculations component"; abstract; claim 9); Wittig discloses a picture noise selector (Fig 1-16, "noise estimate block"; paragraph [0014]) selecting a desired number-th arranged absolute difference (paragraphs [0014]-[0015]), of a plurality of calculations from the SAD calculator (Fig. 1-10, "SAD"; paragraph [0012]) for the input image signal (paragraph [0012]), as a picture noise when absolute differences calculated by the SAD calculator are arranged (paragraphs [0014]-[0017], "counters"), in turn, from a smallest value toward a largest value (paragraphs [0014]-[0017], "SAD value range").

It would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to use Suzuki's invention and Wittig's invention in De Hann's invention to provide a more reliable method and apparatus for noise measurement as suggested by De Hann (col. 1, lines 49-50).

Regarding claim 2, De Hann further discloses a comparator comparing whether the average luminance value calculated by the block average calculator is within a desired range, wherein the SAD calculator calculates the absolute difference upon the comparator determining that the average luminance value is within the desired range (Figs 1-7 and 4-7, "comparator"; abstract; col. 3, lines 4-16 and 50-67; col. 4, lines 1-13; claims 1 and 9).

Regarding claim 3, Wittig further discloses comprising a regional noise selector selecting a desired arranged number-th picture noise as a regional noise from selected picture noises (Fig 1-16, "noise estimate block"; paragraph [0014]) selected by the picture noise selector (Fig 1-16, "noise estimate block"; paragraph [0014]) from pictures of the image signal in a desired region arranged, in turn, from a smallest selected picture noise toward a largest selected picture noise (Fig. 1-14 and 1-16; paragraph [0013]-[0014]; claims 1-2 and 7-8).

Regarding claim 4, Wittig further discloses that the picture noise selector selects a second absolute difference as the picture noise (Fig. 1-14 and 1-16; paragraph [0013]-[0014]; claims 1-2 and 7-8). Based on the disclosure that selecting one of the noise estimate value from the noise estimate selector block, it is inherent and readily apparent that the noise can be any values from the counters such as the second one.

Regarding claim 5, Wittig further discloses that the regional noise selector selects a second picture noise as the regional noise (Fig. 1-14 and 1-16; paragraph [0013]-[0014]; claims 1-2 and 7-8). Based on the disclosure that selecting one of the

noise estimate value from the noise estimate selector block, it is inherent and readily apparent that the noise can be any values from the counters such as the second one.

Regarding claim 6, claim 6 is analogous and corresponds to claim 1. See rejection of claim 1 for further explanation.

Regarding claim 7, claim 7 is analogous and corresponds to claim 2. See rejection of claim 2 for further explanation.

Regarding claim 8, claim 8 is analogous and corresponds to claim 3. See rejection of claim 3 for further explanation.

Regarding claim 9, claim 9 is analogous and corresponds to claim 4. See rejection of claim 4 for further explanation.

Regarding claim 10, claim 10 is analogous and corresponds to claim 5. See rejection of claim 5 for further explanation.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHN Wahnkyo LEE whose telephone number is (571)272-9554. The examiner can normally be reached on Monday - Friday (Alt.) 7:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jingge Wu can be reached on (571) 272-7429. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John Wahnkyo Lee/
Examiner, Art Unit 2624

/Jingge Wu/

Supervisory Patent Examiner, Art Unit 2624